

BULLETIN
CHILD NUTRITION PROGRAMS**NSLP 10-10**
CCC 09-10
FDCH 12-10
SFSP 08-10**August 30, 2010****SUBJECT: Disclosure Requirements for the Child Nutrition Programs****CONTACT: Kim Loveland, Specialist****PH: (801) 538-7562**

FNS strongly encourages States and LEAs to utilize data-sharing authorities appropriately to expand access to programs and services and support effective operation of educational programs. However, recent inquiries from program operators have indicated that they are being asked to share information that is not releasable and/or that eligibility information is being requested by or for persons who do not have a legitimate need for it.

This memorandum restates the statutory and regulatory requirements for disclosure of information concerning children who are eligible for free or reduced price meals in any of the Child Nutrition Programs. While the large majority of requests for eligibility information are related to the school meal programs, we are also including the Child and Adult Care Food Program (CACFP) and the Summer Food Service Program (SFSP) to remind State agencies and local institutions that the disclosure requirements also apply to these programs.

Please keep in mind that:

- the statutory and regulatory requirements limit when information may be released without the written consent of the child's parent or guardian;
- the release of data by an LEA is always optional, not required;
- an agreement or memorandum of understanding (MOU) between State or local agencies may be required and, even if not required, is useful; and
- aggregate information will often meet the needs of the requestor and should be used whenever possible. However, LEAs, institutions, sponsors, etc. are cautioned about release of aggregate data when individual children's eligibility may be deduced. For example, individual identities of children in a specific classroom may be deduced since this is a very small subset in a school.

Statutory and Regulatory Requirements

Section 9(b)(6) of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1758(b)(6)) delineates the restrictions on the disclosure and use of information obtained from an application for free and reduced price meals, as well as the criminal penalties for improper release of information. Note that while the law discusses applications, the disclosure requirements

also apply to information obtained through the direct certification process. A copy of this section of the law is attached for reference. We recommend that State agencies and LEAs and, as applicable, CACFP institutions, sponsoring organizations and family day care home providers and SFSP sponsoring organizations, cite the law when responding to requests for release of information.

The regulations implementing the law are as follows:

Program	Definition of Disclosure	Provisions on Privacy Act Notice and Disclosure to Other Programs
Special Milk Program for Children	7 CFR 215.2(i-1)	7 CFR 215.13a(f)-(l)
Summer Food Service Program	7 CFR 225.2	7 CFR 225.15(f)-(l)
Child and Adult Care Food Program	7 CFR 226.2	7 CFR 226.23(e) and (i)-(n)
National School Lunch and School Breakfast Programs	7 CFR 245.2	7 CFR 245.6(a) and (f)-(k)

Guidance

Part 7 of the Eligibility Manual for School Meals, January 2008 edition, provides specific guidance on applying the statutory and regulatory requirements. The manual may be found at: <http://www.fns.usda.gov/cnd/guidance/default.htm>. A convenient source of information is the manual's "Disclosure Chart" which briefly outlines various types of requestors and any restrictions on receipt of information. The chart is attached to this memorandum for your reference.

Examples of specific programs that are authorized, by law, to receive eligibility status of individual children are the No Child Left Behind Program and the National Assessment of Educational Progress (NAEP). The name and eligibility status only may be shared with these programs without prior notice and consent.

However, in recognition of the importance of health insurance for children, the law and regulations provide special procedures for sharing of eligibility information with Medicaid and the State Children's Health Insurance Program (SCHIP) in accordance with the required agreement. All eligibility information may be shared unless the child's parent or guardian elects not to share the information. To allow the parent/guardian to decline, the LEA must include a form that explains sharing with Medicaid/SCHIP; i.e., unless the parent/guardian signs and submits the "opt out" form, eligibility information will be shared with Medicaid/SCHIP. A sample of an "opt out form" is included in our prototype application package which may be found at: <http://www.fns.usda.gov/cnd/frp/frp.process.htm>. The NSLA specifies the "opt out" procedure for Medicaid/SCHIP purposes; therefore, LEAs cannot use the same form used for prior consent to release eligibility information for other programs.

Our guidance emphasizes that, in addition to being authorized to receive information, there must be a "need to know." For instance, while Federal education programs are authorized, not all persons administering an education program in the school district need to access information (e.g., teachers, principals or guidance counselors). State and local agencies must be assured that persons receiving a child's free/reduced price eligibility information have a legitimate need to

know.

Periodically, schools will be asked to release eligibility information to a non-custodial parent or to a parent who has split custody. For example, a father shares custody with the children's mother but believes that the mother has misrepresented household circumstances and that the children should not be eligible for free or reduced price meals. These requests are not permitted under the statute or regulations without written permission from the person who signed the application. If there is any question about releasing this information for custody or divorce actions, local officials should contact the school district's attorneys for assistance.

Inter-Agency Agreements

Our regulations and guidance address agreements between agencies in order to facilitate sharing information. For Medicaid/SCHIP, the State agency administering the Child Nutrition Programs and the State agency administering Medicaid and SCHIP or the LEA and the local Medicaid/SCHIP agency must enter into agreement. We recommend that an agreement or MOU be used to share information for other purposes such as other Federal or state education programs. The agreement should detail the procedures for data sharing, persons who will have access to the information and why they need the information, etc. Please refer to sections 245.6(j), 215.13a(k), 225.15(k) and 226.23(m) of the regulations and Part 7, Section I. of the eligibility manual for more information on agreements.

Expectations

In order to properly release eligibility information, an official must first determine if the request is from one of the programs or sources authorized under the statute. If so, the official must ensure that the person(s) who would receive and use the information have a legitimate need to carry out an authorized activity.

Contact the State Agency if you have questions or concerns about releasing free and reduced price eligibility information.